STATUTORY RULES OF NORTHERN IRELAND

2004 No. 428

FAMILY LAW
CHILD SUPPORT
SOCIAL SECURITY

The Child Support and Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2004

Made - - - - 6th October 2004

Coming into operation in accordance with regulation 1

The Department for Social Development, in exercise of the powers conferred by Articles 16(3), 18(1)(a), 19(3), 28B(2)(c), 47 and 48(4) of, and paragraphs 5, 6(2), (4) and (6), 9(d), 10(1) and 11 of Schedule 1, paragraph 2(a) of Schedule 4A and paragraphs 5(1) and 6 of Schedule 4B to, the Child Support (Northern Ireland) Order 1991(**1**) and now vested in it(**2**), and section 28 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**3**) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Child Support and Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2004 and, subject to paragraph (2), shall come into operation on 7th October 2004.

(**1**) S.I. 1991/2628 (N.I. 23); Article 16(3) was amended by paragraph 14(b) of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)); Article 18 was substituted by Article 40 of the Social Security (Northern Ireland) Order 1998 and is amended by section 8 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)); Article 19 was substituted by Article 41 of the Social Security (Northern Ireland) Order 1998 and is amended by section 9 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000; Article 28B was inserted by Article 3(1) of the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13)) and is substituted by section 5(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000; Article 47 was amended by paragraph 31 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 and is amended by paragraph 27 of Schedule 3 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000; paragraph 5 of Schedule 1 was amended by paragraph 4(7) of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)); paragraph 9 of Schedule 1 was amended by paragraph 32(2) of Schedule 6 to the Social Security (Northern Ireland) Order 1998; Part I of Schedule 1 is substituted by Schedule 1 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000; Schedule 4A was inserted by Schedule 1 to the Child Support (Northern Ireland) Order 1995 and is substituted by Part I of Schedule 2 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and Schedule 4B was inserted by Schedule 2 to the Child Support (Northern Ireland) Order 1995 and is substituted by Part II of Schedule 2 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(**2**) *See* Article 8(b) of S.R. 1999 No. 481

(**3**) 2000 c. 4 (N.I.)

(2) Regulations 2 and 5 shall come into operation, for the purposes of any type of case which is not one in relation to which 3rd March 2003 is the day appointed for the coming into operation of sections 1(2), 8 and 9 of, and paragraphs 11 and 16 of Schedule 3 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**4**), on the day on which those provisions come into operation in relation to that type of case.

Amendment of the Child Support (Information, Evidence and Disclosure) Regulations

2. In regulation 8(1) of the Child Support (Information, Evidence and Disclosure) Regulations (Northern Ireland) 1992(**5**) (disclosure of information to a court or tribunal) after sub-paragraph (b) there shall be inserted the following sub-paragraph –

"(cc) a person with a right of appeal under the Order to an appeal tribunal,".

Amendment of the Child Support (Maintenance Assessment Procedure) Regulations

3. In regulation 16(1) of the Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992(**6**) (revision of decisions) –

(a) after sub-paragraph (d) the word "or" shall be omitted; and

(b) after sub-paragraph (e) there shall be added –

"or

(f) if an appeal is made under Article 22 of the Order(**7**) against a decision within the time prescribed in regulation 31 of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(**8**), or in a case to which regulation 32 of those Regulations applies within the time prescribed in that regulation, but the appeal has not been determined.".

Amendment of the Child Support (Maintenance Assessments and Special Cases) Regulations

4.—(1) The Child Support (Maintenance Assessments and Special Cases) Regulations (Northern Ireland) 1992(**9**) shall be amended in accordance with paragraphs (2) to (4).

(2) In Schedule 1 (calculation of N and M) in paragraph 1(1)(**10**) after head (g) there shall be inserted the following head –

"(gg) any statutory paternity pay under Part XIIZA of the Contributions and Benefits Act or any statutory adoption pay under Part XIIZB of that Act(**11**);".

(3) In Schedule 2 (amounts to be disregarded when calculating or estimating N and M) in paragraph 35 the words "by virtue of regulations made" and ", or by virtue of the provisions of Article 55" shall be omitted.

(**4**) *See* S.R. 2003 No. 53 (C. 4), to which there is an amendment not relevant to these regulations

(**5**) S.R. 1992 No. 339; regulation 8(1) was amended by regulation 49(2)(a) of S.R. 1996 No. 541, regulation 2(3)(a) of S.R. 1998 No. 8 and Article 7(7)(a) and (b) of S.R. 1999 No. 246 (C. 20)

(**6**) S.R. 1992 No. 340; regulation 16 was substituted by regulation 2(12) of S.R. 1999 No. 167 and amended by regulation 4(3) of S.R. 2000 No. 215; S.R. 1992 No. 340 is revoked, with savings, by regulation 29 of S.R. 2001 No. 17

(**7**) Article 22 was substituted by Article 42 of the Social Security (Northern Ireland) Order 1998 and is substituted by section 10 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(**8**) S.R. 1999 No. 162; relevant amending regulations are S.R. 2002 Nos. 164 and 189

(**9**) S.R. 1992 No. 341; relevant amending regulations are S.R. 1995 Nos. 162 and 475, S.R. 1996 Nos. 317 and 590 and S.R. 1999 No. 246 (C. 20); S.R. 1992 No. 341 is revoked, with savings, by regulation 15 of S.R. 2001 No. 18

(**10**) Paragraph 1(1) was amended by regulation 9(14)(a) of S.R. 1995 No. 162, regulation 4(8)(a) of S.R. 1996 No. 317 and regulation 3(7)(a)(i) of S.R. 1996 No. 590

(**11**) Parts XIIZA and XIIZB were inserted by, respectively, Articles 5 and 6 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

(4) In Schedule 3B(**12**) (amount to be allowed in respect of travelling costs) –

(a) in paragraph 1 for the definition of "straight-line distance" there shall be substituted the following definition –

> ""straight-line distance" means the straight-line distance measured in kilometres and calculated to 2 decimal places, and, where that distance is not a whole number of kilometres, rounded to the nearest whole number of kilometres, a distance which exceeds a whole number of kilometres by 0.50 of a kilometre being rounded up;";

(b) in paragraphs 7, 14 and 20 –

(i) for "150", wherever it occurs, there shall be substituted "240", and

(ii) for "10 pence" there shall be substituted "6 pence"; and

(c) in paragraph 8(1) and (2)(**13**) for "13" there shall be substituted "14".

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations

5. In regulation 6B of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(**14**) (circumstances in which a child support decision may not be superseded) –

(a) for paragraph (3) there shall be substituted the following paragraph –

> "(3) Where the application for a supersession is made on more than one ground, if those grounds which do not relate to the net income of the non-resident parent lead to a superseding decision this regulation shall not apply to the ground relating to the net income of that parent."; and

(b) after paragraph (4) there shall be added the following paragraph –

> "(5) Where an application has been made to which paragraph (1) applied ("application A") and a further application ("application B") is made for a supersession on a ground other than one relating to the net income of the non-resident parent, the Department may make a superseding decision on the basis that application A was made at the same time as application B.".

Amendment of the Child Support (Maintenance Calculation Procedure) Regulations

6.—(1) The Child Support (Maintenance Calculation Procedure) Regulations (Northern Ireland) 2001(**15**) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 28(1)(**16**) (effective dates of maintenance calculations in specified cases) after sub-paragraph (c) there shall be added the following sub-paragraph –

> "(d) except where the parent with care has made a request under Article 9(5) of the Order, where on the date the application is made, or treated as made under regulation 3, there is in force a maintenance calculation in relation to the same non-resident parent and a different person with care, and the maintenance calculation in force when the application was made has ceased to have effect before a decision has been made in respect of that application, the effective date of the maintenance calculation made in response to the application shall be –

(**12**) Schedule 3B was inserted by Schedule 2 to S.R. 1995 No. 162 and amended by regulation 4 (11) of S.R. 1995 No. 475 and Article 9(12) of S.R. 1999 No. 246 (C. 20)
(**13**) Paragraph 8(2) was amended by Article 9(12)(b) of S.R. 1999 No. 246 (C. 20)
(**14**) Regulation 6B was inserted by regulation 2(7) of S.R. 2001 No. 23 and amended by regulation 6(3) of S.R. 2002 No. 164
(**15**) S.R. 2001 No. 17; relevant amending regulations are S.R. 2002 No. 164 and S.R. 2003 No. 84
(**16**) Regulation 28 was amended by regulation 7(7) of S.R. 2002 No. 164 and regulation 8(5) of S.R. 2003 No. 84

(i) where the date of notification to the non-resident parent is before the date on which the maintenance calculation in force has ceased to have effect, the day following the day on which that maintenance calculation ceases to have effect;

(ii) where the date of notification to the non-resident parent is after the date on which the maintenance calculation in force has ceased to have effect, the date of notification to the non-resident parent.".

(3) In regulation 30(1)(c)(**17**) (transitional provision – effective dates and reduced benefit decisions) for "and in sub-paragraph (c)(iii)" there shall be substituted ", in sub-paragraph (c)(iii) and the first time it occurs in sub-paragraph (d)".

Amendment of the Child Support (Maintenance Calculations and Special Cases) Regulations

7.—(1) The Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001(**18**) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 5(1) (nil rate) sub-paragraph (i) shall be omitted.

(3) In the Schedule (net weekly income) –

(a) in paragraph 4(1) after head (d) there shall be inserted the following head –

"(dd) any statutory paternity pay under Part XIIZA of the Contributions and Benefits Act or any statutory adoption pay under Part XIIZB of that Act;"; and

(b) after paragraph 16 there shall be added the following Part –

"PART VI

BENEFITS, PENSIONS AND ALLOWANCES

17.—(1) Subject to paragraph (2), the net weekly income of a non-resident parent shall include payments made by way of benefits, pensions and allowances prescribed in regulation 4 for the purposes of paragraph 4(1)(b) and (c) of Schedule 1 to the Order, to a non-resident parent or his partner at the rate payable at the effective date.

(2) Paragraph (1) applies only for the purpose of establishing whether the non-resident parent is a person to whom paragraph 5(b) of Schedule 1 to the Order applies.".

Amendment of the Child Support (Transitional Provisions) Regulations

8.—(1) The Child Support (Transitional Provisions) Regulations (Northern Ireland) 2001(**19**) shall be amended in accordance with paragraphs (2) to (9).

(2) In regulation 2(1) (interpretation) –

(a) after the definition of "the Act" there shall be inserted the following definition –

""the Arrears, Interest and Adjustment Regulations" means the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992(**20**);"; and

(**17**) Regulation 30(1) was substituted by regulation 8(7)(a) of S.R. 2003 No. 84
(**18**) S.R. 2001 No. 18, to which there are amendments not relevant to these regulations
(**19**) S.R. 2001 No. 19; relevant amending regulations are S.R. 2002 No. 164, and S.R. 2003 Nos. 84, 91 and 469
(**20**) S.R. 1992 No. 342

(b) in the definition of "new amount" for "in accordance with the conversion decision" there shall be substituted "from the case conversion date".

(3) In regulation 3(**21**) (decision and notice of decision) for paragraph (2) there shall be substituted the following paragraph –

"(2) Where the Department acts in accordance with paragraph (1), the information used for the purposes of that supersession will be –

(a) that held by the Department on the calculation date; or

(b) where –

(i) regulation 5(b) applies, and

(ii) the Department is unable to make the decision required to be made in accordance with that regulation on the basis of the information referred to in sub-paragraph (a),

that which was used or considered to make the maintenance assessment to be superseded in accordance with regulation 3(1)(a) or (b).".

(4) After regulation 4(**22**) (revision, supersession and appeal of conversion decisions) there shall be inserted the following regulation –

"**Revision and supersession of an adjustment**

4A. Where, on or after the calculation date, an application is made to the Department or it acts on its own initiative to revise or supersede an adjustment of the amounts payable under a maintenance assessment, it may revise or supersede that adjustment in accordance with the Decisions and Appeals Regulations.".

(5) After regulation 5 (outstanding applications at calculation date) there shall be inserted the following regulation –

"**Outstanding revisions and supersessions at calculation date**

5A. Regulation 5 shall apply in the same way to a decision of the Department acting on its own initiative under Article 18 or 19 of the former Order to revise or supersede a maintenance assessment, an interim maintenance assessment or a departure direction as it does to an application made for the same purpose.".

(6) In regulation 9(1)(**23**) (amount of child support maintenance payable) for "Where" there shall be substituted "Subject to regulation 9A, where".

(7) After regulation 9 there shall be inserted the following regulations –

"**Adjustment of the amount of child support maintenance payable**

9A.—(1) Subject to paragraph (2), where –

(a) there has been an overpayment of child support maintenance under a maintenance assessment; and

(b) the amount payable under that maintenance assessment has been adjusted under regulation 10 of the Arrears, Interest and Adjustment Regulations(**24**) as it applies to a maintenance assessment,

(**21**) Regulation 3 was amended by regulation 10(3) of S.R. 2003 No. 84
(**22**) Regulation 4 was amended by regulation 9(2) of S.R. 2002 No. 164
(**23**) Regulation 9 was amended by regulation 9(3) of S.R. 2002 No. 164
(**24**) Regulation 10 was substituted by regulation 3(3) of S.R. 1995 No. 162 and amended by Article 10(4) of S.R. 1999 No. 246 (C. 20), regulation 2(10) of S.R. 2001 No. 15 and regulation 4(a) of S.R. 2001 No. 23